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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

JUDY SIMAS,

Petitioner,

v.

WORKERS' COMPENSATION APPEALS
BOARD, GUSTINE UNIFIED SCHOOL
DISTRICT et al.,

Respondents.

F050456

(WCAB No. FRE 0233276)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for writ of review from a decision of the Workers' Compensation Appeals Board. William K. O'Brien, James C. Cuneo, and Merle C. Rabine, Commissioners. Thomas W. Anthony, Jr., Workers' Compensation Administrative Law Judge.

William S. Morris, for Petitioner.

No appearance by Respondent Workers' Compensation Appeals Board.

Morse, Giesler & Callister, and Leah F. Arthur, for Respondents Gustine Unified School District and Claims Management, Inc.

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*Before Harris, Acting P.J., Dawson, J., and Kane, J.

Judy Simas filed a claim with the Workers' Compensation Appeals Board (WCAB) for injury to her back while working as a custodian for the Gustine Unified School District (School District) on July 20, 2004. On January 18, 2006, she filed a Declaration of Readiness to Proceed stating the parties were unable to reach an agreement and that discovery had been completed. The School District objected, referring to a discovery dispute and requesting a new Qualified Medical Examination (QME) with an orthopedic surgeon or occupational medicine specialist because the evaluating chiropractor did not consider potential apportionment to a prior injury.

At a March 13, 2006, mandatory settlement conference, the parties presented their arguments and the Workers' Compensation Administrative Law Judge (WCJ) ordered the matter taken off calendar for further development of the record. The WCJ denied the School District's request for a QME with a new physician, but permitted the district to obtain the deposition of the evaluating chiropractor to address the apportionment issue.

On March 22, 2006, Simas filed a Petition for Removal of the WCJ, objecting to the WCJ's taking the matter off calendar. The WCJ issued a Report and Recommendation to the WCAB stating its reasons for extending discovery. On April 14, 2006, the WCAB summarily denied the removal petition.

Simas petitioned this court for review on May 26, 2006, arguing the WCJ violated her due process rights to a hearing, issued a continuance without good cause (Lab. Code, § 5502.5¹), and violated the constitutional requirement that workers' compensation proceedings must accomplish substantial justice expeditiously, inexpensively, and without incumbrance of character (Cal. Const., art. XIV, § 4).

¹ Labor Code section 5502.5 provides: "A continuance of any conference or hearing required by Section 5502 shall not be favored, but may be granted by a workers' compensation judge upon any terms as are just upon a showing of good cause. When determining a request for continuance, the workers' compensation judge shall take into consideration the complexity of the issues, the diligence of the parties, and the prejudice incurred on the part of any party by reasons of granting or denying a continuance."

On August 19, 2006, Simas advised this court by letter that “this case has been settled by a stipulated award approved 8/15/06.” The statement adds, however, that she presents “an important issue” because “the procedures allowed in her case are endemic, improper under the law, and will reoccur if this court fails to address them.” She apparently requests this court issue a published decision. Accordingly, she does not unconditionally withdraw the Petition for Writ of Review.

This court published a related opinion in *Telles Transport v. Workers’ Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159 (*Telles*). *Telles* examined the statutory conflict between closing discovery at the time of the mandatory settlement conference and the WCJ’s duty to ensure the record is adequately developed. We acknowledged that, based on the California Constitution and Labor Code sections 5701 and 5906, “ ‘it is well established that the WCJ or the Board may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence.’ ” (*Telles, supra*, at p. 1164.) *Telles* went on to conclude the admission of additional evidence after the mandatory settlement conference was inappropriate when the evidence was *purposely* excluded as a trial tactic by the party later seeking its admission. (*Id.* at pp. 1165-1167.) Here, however, the WCJ agreed with the School District that the QME was insufficient to support an award. The WCJ stated in his report to the WCAB: “In reviewing the documents, it was determined that the evidence on issues, including disability and apportionment needed to be further developed before the matter was ready to proceed to trial.... Allowing the matter to proceed to trial with a record that is not completely developed could result in an even greater delay for the injured worker.” Moreover, the WCJ explained the delays in this case were caused equally by defense and Simas’s counsel. Simas’s claim is neither novel nor meritorious.

DISPOSITION

The “Petition for Writ of Review,” filed May 25, 2006, is denied. This opinion is final forthwith as to this court.